

In The United States District Court For
the middle District of Alabama
Eastern Division

RECEIVED
2007 NOV 14
JEBRA P. HACKETT, C.
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

Ricky Dwayne Smith
Prose Plaintiff,

v.

Tommy Baswell, et Al.,
Defendants

Case NO. 3:07-CV-965-
- MEF

Amended Complaint

~~The~~ The plaintiff was incarcerated in the Russell Co. Jail After being Formerly convicted of the crime of "Theft of Property 1st degree." The plaintiff had been released on this charge by special sentencing instructions. Plaintiff had received a split sentence of Ten years. The Particulars are as follows: 12 months to serve in the Russell Co. Jail, 5 years on probation, 5 years suspended. This actual sentencing took place on or about July of 2005.

At this time of sentencing or shortly thereafter during the same period of incarceration the Plaintiff informed the medical staff of the Russell Co. Jail of his current medical condition through a series of institutional remedies, namely, inmate request, inmate medical requests, institutional

Grievance procedure and a handwritten letter hand delivered through Institutional channels to the "Parties" or "Defendants" named in this Court Action.

The Plaintiffs concern named in these aforementioned remedies to the "defendants" was the lack of medical treatment for the Plaintiffs earlier diagnosis by Dr. A.D. Patel of Columbus, Georgia at the Columbus Diagnostic Ctr, and Dr. Daryl Ellis of the Phoenix Medical Ministry, located in Phoenix City, Alabama.

These two separate but concurring medical diagnosis, listed the Plaintiff as being infected with the Hepatitis C Virus.

Through Institutional channels and remedies the Plaintiff sought medical treatment for this disease. The Plaintiff did not receive any medical treatment for this Hepatitis C Virus, or otherwise known as H.C.V., during the Incarceration period beginning in March 2003, and ending in October 2005.

The Plaintiff was released in October 2005, for special unrelated circumstances not related to his medical condition and the Plaintiff began his (5) Five year probation sentence as ordered by the Judge in the State Conviction.

The Plaintiff was re-arrested in August of 2006, on the charge of Probation Violation and was placed once again under "Post Conviction" At the Russell County Jail.

At the time of this arrest "Plaintiff" once again sought medical monitoring, and/or treatment for H.C.W., through all previously mentioned Institutional Channels.

During this period of the "Plaintiff's" Incarceration medical Release forms were signed by the Plaintiff and sent out to various doctors that had attended to ~~Smith~~ the "Plaintiff's" medical needs during the time before his ~~incarceration~~ conviction and the time periods between the Plaintiff's Incarceration After Conviction, while serving the Probated portion of the Sentence.

The defendants having been made aware of the Plaintiff's medical History, needs and circumstances during the 2005 Incarceration and the subsequent obtain of medical release forms in 2006 for Dr. A.D. Patel At the Columbus Diagnostic And Gastroenterology Clinic in Columbus, Georgia gives credibility to the Plaintiff's claim of Prior Knowledge before issuing the medication "Ketoconazole" on 9-20-07 by the Russell County Sheriff's Dept. And its medical Staff.

The Plaintiff was being held at the Russell County Jail, beginning July 11th 2007 and ending October 23rd 2007. The reason for this Post Conviction detainment was for the purpose of Probation Revocation of the aforementioned 2005, "Theft of Property 1st degree" Conviction.

The Plaintiff complained that a "Rash" had developed on his Arms. A medical request was submitted to the medical staff during this incarceration period along with this "Rash" and the Plaintiff was seen by the Medical Staff of the Russell County Jail, namely, Dr. Warr (Senior), Nurse Tina Pelfry (Riley). This took place on 9-20-07. This date follows all previous dates on which the Plaintiff made known his H.C.V. condition and the date in which the "defendants" made request to Dr. A. D. Patel and Dr. Daryl Ellis for the Plaintiff's medical records regarding the H.C.V. diagnosis and testing in particular.

Being aware of the "Plaintiff's" medical condition and in complete disregard for his Health or/and the lack of Professionalism / Adequacy of the Defendants medical Staff, Prescribed and medication that is in contrast to Administering to a person with Liver disease.

The Plaintiff was made aware of the potential harm of this medication when the Plaintiff received through U.S. mail two pages out of a Physicians Desk Reference Publication listing the harmful effects

The Plaintiff prior to receiving the ~~except~~ excerpt from the Physicians desk reference began experiencing some of the symptoms of liver damage. And after receiving this excerpt the ~~date~~ "Plaintiff" filed an Institutional Grievance on the "Prescribing" of such a contrary medication to someone with H.C.V.

The Plaintiff has in his possession At this time A copy of the Institutional Grievance And Appeal, the Package in which the prescribed medicine was administered with the issuing (Prescribing) Doctors Name, the medications proper name, A few of the dates distributed, the milligrams prescribed daily, the Rx #, A complete description, the Plaintiff's name And the initials of the detainment facility.

With All the Collective information in the possession of the Plaintiff, in the possession of Institutional Records And files, And the files of the Doctors that previously diagnosed And monitored the Plaintiff's medical condition; the Plaintiff feels that Deliberate Indifference was shown by the Russell County Jail And its medical Staff.

The Plaintiff Also contends the risk of serious harm did And does exist due to the previous diagnosis of the Plaintiff's medical condition.

The Above Named "Ketconazole" is the medicine wrongly prescribe d (administered), Harmful to some

one with liver disease, the Above mentioned medical diagnosis state Plaintiff's condition (medically), And the harm caused is the symptoms that now appear from the Aggravation and potential harm to an already fatal liver disease.

The enclosed excerpt from a Physicians desk reference, the dispersive packet for the prescribed medication, the defendant's ^{own} Medical Records and the Defendants collected information in the Plaintiff's Institutional medical file, As well as the original diagnosing Doctor (Daryl Ellis), And the follow up monitoring of A. D. Patel after initial diagnosis further supports Plaintiff's Claims.

The Named Defendants had all information pertaining to Plaintiff's H.C.V. And still administered harmful meds.

All Claims in original Civil Complaint case No. 3:07-CV-965-MEF where Post Conviction Complaints including First, Second and Third grounds of Complaint.

Also Plaintiff would also wish to include one other request for relief to ~~be~~ the Plaintiff's original Civil Complaint request for relief and that being the ~~ten~~ two year sentence by the Russell County Court be Amended to the status of ten years suspended.

Being that Russell County has shown its inability to adequately provide medical service

for this Plaintiffs complex medical needs.

I swear that All Above statements are true, Accurate and correct to the best of my knowledge.

Ricky Dewayne Smith Prose
Plaintiff

In the Middle District Court for the
Middle District of Alabama
Eastern Division

2007 NOV 14 A 9:48

Ricky Dewayne Smith, Prose
Plaintiff,

U.
Tommy Boswell, et Al.,
Defendants

Case No
3:07-CV-965-MEF

Certificate of Service

Comes now the Plaintiff being ignorant and unlearned bars of this court to accept this humble effort to pursue my Constitutional Rights under the Amendments to the Constitution and grant me the Status of Indigent in this filing.

Also prays this court will recognize the hardship ~~at~~ under which this Plaintiff files and will serve the papers required on All Defendants of this filing.

The Plaintiff does swear All is correct to the best of his knowledge

throbbing or fluttering of the heart), paralysis, rapid decrease in blood pressure, seizures, slow or fast pulse/heartbeat, sweating, vertigo, visual disturbances, vomiting

NITROLINGUAL SPRAY

See Nitroglycerin, page 969.

NITROSTAT TABLETS

See Nitroglycerin, page 969.

NIZATIDINE (generic name)

See Axid, page 181.

NIZORAL

Pronounced: NYE-zore-al

Generic name: Ketoconazole

Why is this drug prescribed?

Nizoral, a broad-spectrum antifungal drug available in tablet form, may be given to treat several fungal infections within the body, including oral thrush and candidiasis.

It may also be given to treat severe, hard-to-treat fungal skin infections that have not cleared up after treatment with creams or ointments, or the oral drug griseofulvin (Fulvicin, Grisactin).

Most important fact about this drug

In some people, Nizoral may cause serious or even fatal damage to the liver. Before starting to take Nizoral, and at frequent intervals while you are taking it, you should have blood tests to evaluate your liver function. Tell your doctor immediately if you experience any signs or symptoms that could mean liver damage: these include unusual fatigue, loss of appetite, nausea or vomiting, jaundice, dark urine, or pale stools.

How should you take this medication?

Take Nizoral exactly as prescribed.

You should keep taking the drug until tests show that your fungal infection has subsided. If you stop too soon, the infection might return.

You may want to take Nizoral Tablets with meals to avoid stomach upset.

In the United States
District Court for the Middle
District of Alabama
Easter Division

Ricky Dwayne Smith
Pro Se
Plaintiff,
v.
Tommy Baswell,
et al.,
Defendants

CASE NO

3:07-cv-965-MEF

Excerpt from
Reference

Physicians Desk

Ricky Dewey Smith
Plaintiff
Tommy Boswell
defendant

CASE# 3:07-cv-965-
 -MEF

SMITH, RICKY
 TAKE BY MOUTH
 AT 20:00 ON 09/30 SUN
 KETOCONAZOLE 200 MG
 WHI RND 621 QTY:1
 RX #06651666 DR. WARR, STU
 SINGULAIR 10 mg
 BGE SQU MRK 117 S QTY:1
 RX #06651664 DR. WARR, STU

SMITH, RICKY
 TAKE BY M
 AT 20:00 ON 0
 KETOCONAZOLE
 WHI RND 621
 RX #06651666 DR.
 SINGULAIR
 BGE SQU MRK 1
 RX #06651664

SMITH, RICKY
 TAKE BY MOUTH
 AT 20:00 ON 09/21 FRI
 KETOCONAZOLE 200 MG
 WHI RND 621 QTY:1
 RX #06651666 DR. WARR, STU
 SINGULAIR 10 mg
 BGE SQU MRK 117 S QTY:1
 RX #06651664 DR. WARR, STU

SMITH, RICKY RJ
 TAKE BY MOUTH
 AT 20:00 ON 09/23 SUN
 KETOCONAZOLE 200 MG
 WHI RND 621 QTY:1
 RX #06651666 DR. WARR, STU
 SINGULAIR 10 mg
 BGE SQU MRK 117 S QTY:1
 RX #06651664 DR. WARR, STU

RX #06651664 DR. WARR, STU
 BGE SQU MRK 117 S QTY:1
 SINGULAIR 10 mg
 WHI RND 621 QTY:1
 RX #06651666 DR. WARR, STU
 KETOCONAZOLE 200 MG
 AT 20:00 ON 09/23 SUN
 TAKE BY MOUTH
 SMITH, RICKY RJ

SMITH, RICKY RJ
 TAKE BY MOUTH
 AT 20:00 ON 09/27 THU
 KETOCONAZOLE 200 MG
 WHI RND 621 QTY:1
 RX #06651666 DR. WARR, STU
 SINGULAIR 10 mg
 BGE SQU MRK 117 S QTY:1
 RX #06651664 DR. WARR, STU

SMITH, RICKY RJ
 TAKE BY MOUTH
 AT 20:00 ON 09/22 SAT
 KETOCONAZOLE 200 MG
 WHI RND 621 QTY:1
 RX #06651666 DR. WARR, STU
 SINGULAIR 10 mg
 BGE SQU MRK 117 S QTY:1
 RX #06651664 DR. WARR, STU

These Are some of the packets the medication was distributed to the Plaintiff in, but does not include All, being the officers distributing the meds would not always allow the Plaintiff to keep them once empty.

RUSSELL COUNTY SHERIFF'S DEPARTMENT CORRECTIONS DIVISION INMATE GRIEVANCE FORM

NOTE: All grievances must be completed in ink. If additional pages are needed, plain lined paper may be used

Submitted By:		Received By:	
Inmate's Name (last name first) <i>Smith Ricky Dewayne</i>		CO's Name & ID Number <i>Schwartz 59 sector</i>	
Housing Assignment <i>Russell County Jail Cell Block D-14</i>		Shift Assignment <i>A Night. Time 1953</i>	
<p>PART "A" INMATE REQUEST</p> <p><i>It has just been brought to my attention by contacts of mine that medication prescribed to me at the Russell County Jail by Dr. Stu Warr and Nurse Riley is harmful or even fatal to someone with liver disease, such as myself, namely hepatitis C, of which this medical staff is aware, having they have received my medical file from my liver specialist.</i></p> <p><i>(see attached sheet A + B)</i></p> <p align="right">Grievant (Inmate) Signature <i>Ricky D. Smith</i></p>			
<p>PART "B" - RESPONSE</p> <p><i>10/9/07 - Referred to Medical Dr. Warr and Nurse Riley - J. Hallen.</i></p> <p><i>10/10/07 - I forward you a copy of what I sent to the Medical Department. You should get a answer from the medical department. Then if you are not happy file an appeal.</i></p> <p>Date of Response <i>10/10/07</i> Divisional Grievance Officer <i>J. Hallen</i> ID Number <i>10/10/07</i></p> <p align="center">NOTE: If you are dissatisfied with this response, you may appeal directly to the Administrator of Corrections. Your appeal must be filed within 72 hours, excluding Saturdays, Sundays, and legal holidays, of the time/date you acknowledge receipt of this response.</p>			
<p align="center">PART "C" - RECEIPT</p> <p>Return To: <i>Smith Ricky Smith</i> Date <i>10/10/07</i> Time <i>2335</i></p> <p>Submitting Inmate <i>Ricky Dewayne Smith</i> Receiving Shift Supervisor <i>Sgt. Perry</i></p>			
<p align="center">PART "D" - RETURN RECEIPT</p> <p>Returned To <i>Ricky Dewayne Smith</i> Date <i>10/10/07</i> Time <i>2335</i></p> <p>Witness <i>William E. Wells</i> Submitting Inmate <i>Ricky D. Smith</i></p>			
<p align="center">APPEAL NOTIFICATION</p> <p><i>See Attachment B</i></p> <p>I hereby give notice of appeal of the findings of the Divisional grievance Officer. I have attached to this notice of appeal a statement of the basis for my appeal.</p> <p>Appeal Received By <i>J. Muth</i> Date <i>10-10-2007</i> Time <i>0905</i></p> <p>Submitted By <i>Ricky D. Smith</i> Copy Received By _____</p>			

Russell Co. Sheriff's Dept.

Corrections Division

Inmate Grievance

Attached Sheet A Ricky D. Smith #93420 10-5-07
D-Block Cell #14

The medication prescribed to me by the Medical Staff of Russell County Jail, namely (Ketoconazole) is not to be given to anyone with liver disease.

I was prescribed on 9-20-07

Relief Sought: The immediate replacing of Nurse Riley in the medical Dept. of Russell County Jail, also positive damage for liver disease and/or damage in the amount of 2.5 million dollars (U.S. Currency) and immediate appointment with a liver specialist, full medical paid for all liver associated treatments now and in the future, including but not limited to liver transplant, and any other liver associated illnesses, by the Russell Co. Sheriff's Dept, Sheriff and that offices responsible subordinates.

The 2.5 million is also for pain and suffering now and the future associated with liver disease

See

GRIEVANCE Appeal Attachment B

Appeal to Grievance Answer dated 10/9/07
by Lt. Holland Date 10/10/07

The Answer to my Grievance was insufficient due to the fact it did not respond to the issues of my Grievances. The improper or irresponsible administering of a drug not compatible with the medical issues of grieving inmate nor the irresponsibility and lack of professionalism of the medical staff, specifically Nurse Tina Riley.

Nor did the Grievance officer / Lt. Holland address the Relief sought Issue.

Ricky Smith

Honorable Mark E. Fuller
United States District Court
Middle District of Alabama
P.O. Box 711
Montgomery, Ala. 36101



Debra Smith
8-Camel Street
Montgomery, Ala 36108